

1 AN ACT in relation to criminal law.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 5. The Illinois Police Training Act is amended
5 by changing Section 6.1 as follows:

6 (50 ILCS 705/6.1)

7 Sec. 6.1. Decertification of full-time and part-time
8 police officers.

9 (a) The Board must review police officer conduct and
10 records to ensure that no police officer is certified or
11 provided a valid waiver if that police officer has been
12 convicted of a felony offense under the laws of this State or
13 any other state which if committed in this State would be
14 punishable as a felony. The Board must also ensure that no
15 police officer is certified or provided a valid waiver if
16 that police officer has been convicted on or after the
17 effective date of this amendatory Act of 1999 of any
18 misdemeanor specified in this Section or if committed in any
19 other state would be an offense similar to Section 11-6,
20 11-9.1, 11-14, 11-17, 11-19, 12-2, 12-15, 16-1, 17-1, 17-2,
21 28-3, 29-1, 31-1, 31-6, 31-7, 32-4a, or 32-7 of the Criminal
22 Code of 1961 or to Section 5 or 5.2 of the Cannabis Control
23 Act.

24 The Board must appoint investigators to enforce the
25 duties conferred upon the Board by this Act.

26 (b) It is the responsibility of the sheriff or the chief
27 executive officer of every local law enforcement agency or
28 department within this State to report to the Board any
29 arrest or conviction of any officer for an offense identified
30 in this Section.

31 (c) It is the duty and responsibility of every full-time

1 and part-time police officer in this State to report to the
2 Board within 30 days, and the officer's sheriff or chief
3 executive officer, of his or her arrest or conviction for an
4 offense identified in this Section. Any full-time or
5 part-time police officer who knowingly makes, submits, causes
6 to be submitted, or files a false or untruthful report to the
7 Board must have his or her certificate or waiver immediately
8 decertified or revoked.

9 (d) Any person, or a local or State agency, or the Board
10 is immune from liability for submitting, disclosing, or
11 releasing information of arrests or convictions in this
12 Section as long as the information is submitted, disclosed,
13 or released in good faith and without malice. The Board has
14 qualified immunity for the release of the information.

15 (e) Any full-time or part-time police officer with a
16 certificate or waiver issued by the Board who is convicted of
17 any offense described in this Section immediately becomes
18 decertified or no longer has a valid waiver. The
19 decertification and invalidity of waivers occurs as a matter
20 of law. Failure of a convicted person to report to the Board
21 his or her conviction as described in this Section or any
22 continued law enforcement practice after receiving a
23 conviction is a Class 4 felony.

24 (f) The Board's investigators are peace officers and
25 have all the powers possessed by policemen in cities and by
26 sheriff's, provided that the investigators may exercise those
27 powers anywhere in the State, only after contact and
28 cooperation with the appropriate local law enforcement
29 authorities.

30 (g) The Board must request and receive information and
31 assistance from any federal, state, or local governmental
32 agency as part of the authorized criminal background
33 investigation. The Department of State Police must process,
34 retain, and additionally provide and disseminate information

1 to the Board concerning criminal charges, arrests,
2 convictions, and their disposition, that have been filed
3 before, on, or after the effective date of this amendatory
4 Act of the 91st General Assembly against a basic academy
5 applicant, law enforcement applicant, or law enforcement
6 officer whose fingerprint identification cards are on file or
7 maintained by the Department of State Police. The Federal
8 Bureau of Investigation must provide the Board any criminal
9 history record information contained in its files pertaining
10 to law enforcement officers or any applicant to a Board
11 certified basic law enforcement academy as described in this
12 Act based on fingerprint identification. The Board must make
13 payment of fees to the Department of State Police for each
14 fingerprint card submission in conformance with the
15 requirements of paragraph 22 of Section 55a of the Civil
16 Administrative Code of Illinois.

17 (h) No person who has been certified or granted a valid
18 waiver shall be decertified or have his or her waiver revoked
19 except in a case involving homicide upon a finding that he or
20 she has willfully made false statements, under oath, as to a
21 material fact. A finding may be made only after a hearing
22 upon written charges filed with the Illinois Law Enforcement
23 Training Standards Board.

24 (1) The Board shall adopt rules governing the
25 investigation and hearing of charges to assure adequate
26 due process and to eliminate conflicts of interest. A
27 majority of the Board must be present to conduct the
28 hearing.

29 (2) Upon receipt of written charges, the Board is
30 empowered to investigate and dismiss such charges if
31 there is no evidence to support them and to justify the
32 hearing.

33 (i) If the Board finds that sufficient evidence exists,
34 it shall conduct a hearing upon not less than 14 days

1 certified notice. The accused person shall be afforded the
2 opportunity to:

3 (1) be represented by counsel;

4 (2) be heard in his or her own defense;

5 (3) produce proof in his or her defense;

6 (4) request that the Board compel the attendance of
7 witnesses and production of documents.

8 (j) The Board shall have the power to issue subpoenas
9 requiring the attendance and testimony of witnesses and the
10 production of documents and shall also have the power to
11 administer oaths.

12 (k) Any person who is served by the Board with a subpoena
13 to appear, testify, or produce documents and refuses to
14 comply with the subpoena, shall be guilty of a Class B
15 misdemeanor. Any circuit court or judge, upon application by
16 the Board, may compel compliance with Board issued subpoenas.

17 (l) If the charges against the accused are established by
18 clear and convincing evidence, the Board, by a two-thirds
19 vote of the members present at the hearing shall make a
20 finding of guilty and order that the person be decertified to
21 serve as a full-time or part-time police officer. Upon the
22 initial filing of charges, the sheriff or police chief of the
23 accused may suspend the accused person pending the decision
24 of the Board. If the charges are not established by clear and
25 convincing evidence, the Board shall make a finding of not
26 guilty and order the person reinstated and paid compensation
27 for the suspension period, if any, while awaiting the
28 hearing. The sheriff or police chief shall take such action
29 as is ordered by the Board.

30 (m) The provisions of the Administrative Review Law
31 shall govern all proceedings for the judicial review of any
32 order rendered by the Board. Plaintiff shall pay the
33 reasonable cost of preparing and certifying the record for
34 review. If plaintiff prevails, the court shall award the

1 plaintiff the costs incurred.

2 (n) As soon as possible after decertification of a
3 police officer based upon the police officer's willful making
4 of false statements, under oath, as to a material fact in a
5 homicide case, the Board shall notify the defendant who was a
6 party to a proceeding that resulted in the police officer's
7 decertification based on the false statements made by the
8 police officer.

9 (Source: P.A. 91-495, eff. 1-1-00.)

10 Section 10. The Criminal Code of 1961 is amended by
11 changing Section 9-1 as follows:

12 (720 ILCS 5/9-1) (from Ch. 38, par. 9-1)

13 Sec. 9-1. First degree Murder - Death penalties -
14 Exceptions - Separate Hearings - Proof - Findings - Appellate
15 procedures - Reversals.

16 (a) A person who kills an individual without lawful
17 justification commits first degree murder if, in performing
18 the acts which cause the death:

19 (1) he either intends to kill or do great bodily
20 harm to that individual or another, or knows that such
21 acts will cause death to that individual or another; or

22 (2) he knows that such acts create a strong
23 probability of death or great bodily harm to that
24 individual or another; or

25 (3) he is attempting or committing a forcible
26 felony other than second degree murder.

27 (b) Aggravating Factors. A defendant who at the time of
28 the commission of the offense has attained the age of 18 or
29 more and who has been found guilty of first degree murder may
30 be sentenced to death if:

31 (1) the murdered individual was a peace officer or
32 fireman killed in the course of performing his official

1 duties, to prevent the performance of his official
2 duties, or in retaliation for performing his official
3 duties, and the defendant knew or should have known that
4 the murdered individual was a peace officer or fireman;
5 or

6 (2) the murdered individual was an employee of an
7 institution or facility of the Department of Corrections,
8 or any similar local correctional agency, killed in the
9 course of performing his official duties, to prevent the
10 performance of his official duties, or in retaliation for
11 performing his official duties, or the murdered
12 individual was an inmate at such institution or facility
13 and was killed on the grounds thereof, or the murdered
14 individual was otherwise present in such institution or
15 facility with the knowledge and approval of the chief
16 administrative officer thereof; or

17 (3) the defendant has been convicted of murdering
18 two or more individuals under subsection (a) of this
19 Section or under any law of the United States or of any
20 state which is substantially similar to subsection (a) of
21 this Section regardless of whether the deaths occurred
22 as the result of the same act or of several related or
23 unrelated acts so long as the deaths were the result of
24 either an intent to kill more than one person or of
25 separate acts which the defendant knew would cause death
26 or create a strong probability of death or great bodily
27 harm to the murdered individual or another; or

28 (4) the murdered individual was killed as a result
29 of the hijacking of an airplane, train, ship, bus or
30 other public conveyance; or

31 (5) the defendant committed the murder pursuant to
32 a contract, agreement or understanding by which he was to
33 receive money or anything of value in return for
34 committing the murder or procured another to commit the

1 murder for money or anything of value; or

2 (6) the murdered individual was killed in the
3 course of another felony if:

4 (a) the murdered individual:

5 (i) was actually killed by the defendant,

6 or

7 (ii) received physical injuries
8 personally inflicted by the defendant
9 substantially contemporaneously with physical
10 injuries caused by one or more persons for
11 whose conduct the defendant is legally
12 accountable under Section 5-2 of this Code, and
13 the physical injuries inflicted by either the
14 defendant or the other person or persons for
15 whose conduct he is legally accountable caused
16 the death of the murdered individual; and

17 (b) in performing the acts which caused the
18 death of the murdered individual or which resulted
19 in physical injuries personally inflicted by the
20 defendant on the murdered individual under the
21 circumstances of subdivision (ii) of subparagraph
22 (a) of paragraph (6) of subsection (b) of this
23 Section, the defendant acted with the intent to kill
24 the murdered individual or with the knowledge that
25 his acts created a strong probability of death or
26 great bodily harm to the murdered individual or
27 another; and

28 (c) the other felony was an inherently violent
29 crime one-of-the--following:--armed--robbery,--armed
30 violence,--robbery,--predatory-criminal-sexual-assault
31 of--a--child,--aggravated--criminal--sexual-assault,
32 aggravated---kidnapping,---aggravated---vehicular
33 hijacking,--forceible--detention,--arson,--aggravated
34 arson,--aggravated--stalking,--burglary,--residential

burglary,--home--invasion,--calculated-criminal-drug
conspiracy-as-defined-in-Section-405-of-the-Illinois
Controlled-Substances-Act,--streetgang-criminal--drug
conspiracy--as--defined--in--Section--405.2--of--the
Illinois--Controlled--Substances-Act, or the attempt
to commit an inherently violent crime. In this
subparagraph (c), "inherently violent crime"
includes, but is not limited to, armed robbery,
robbery, predatory criminal sexual assault of a
child, aggravated criminal sexual assault,
aggravated kidnapping, aggravated vehicular
hijacking, aggravated arson, aggravated stalking,
residential burglary, and home invasion any-of-the
felonies-listed-in-this-subsection-(c); or

(7) the murdered individual was under 12 years of
age and the death resulted from exceptionally brutal or
heinous behavior indicative of wanton cruelty; or

(8) the defendant committed the murder with intent
to prevent the murdered individual from testifying in any
criminal prosecution or giving material assistance to the
State in any investigation or prosecution, either against
the defendant or another; or the defendant committed the
murder because the murdered individual was a witness in
any prosecution or gave material assistance to the State
in any investigation or prosecution, either against the
defendant or another; or

(9) the defendant, while committing an offense
punishable under Sections 401, 401.1, 401.2, 405, 405.2,
407 or 407.1 or subsection (b) of Section 404 of the
Illinois Controlled Substances Act, or while engaged in a
conspiracy or solicitation to commit such offense,
intentionally killed an individual or counseled,
commanded, induced, procured or caused the intentional
killing of the murdered individual; or

1 (10) the defendant was incarcerated in an
2 institution or facility of the Department of Corrections
3 at the time of the murder, and while committing an
4 offense punishable as a felony under Illinois law, or
5 while engaged in a conspiracy or solicitation to commit
6 such offense, intentionally killed an individual or
7 counseled, commanded, induced, procured or caused the
8 intentional killing of the murdered individual; or

9 (11) the murder was committed in a cold, calculated
10 and premeditated manner pursuant to a preconceived plan,
11 scheme or design to take a human life by unlawful means,
12 and the conduct of the defendant created a reasonable
13 expectation that the death of a human being would result
14 therefrom; or

15 (12) the murdered individual was an emergency
16 medical technician - ambulance, emergency medical
17 technician - intermediate, emergency medical technician -
18 paramedic, ambulance driver, or other medical assistance
19 or first aid personnel, employed by a municipality or
20 other governmental unit, killed in the course of
21 performing his official duties, to prevent the
22 performance of his official duties, or in retaliation for
23 performing his official duties, and the defendant knew or
24 should have known that the murdered individual was an
25 emergency medical technician - ambulance, emergency
26 medical technician - intermediate, emergency medical
27 technician - paramedic, ambulance driver, or other
28 medical assistance or first aid personnel; or

29 (13) the defendant was a principal administrator,
30 organizer, or leader of a calculated criminal drug
31 conspiracy consisting of a hierarchical position of
32 authority superior to that of all other members of the
33 conspiracy, and the defendant counseled, commanded,
34 induced, procured, or caused the intentional killing of

1 the murdered person; or

2 (14) the murder was intentional and involved the
3 infliction of torture. For the purpose of this Section
4 torture means the infliction of or subjection to extreme
5 physical pain, motivated by an intent to increase or
6 prolong the pain, suffering or agony of the victim; or

7 (15) the murder was committed as a result of the
8 intentional discharge of a firearm by the defendant from
9 a motor vehicle and the victim was not present within the
10 motor vehicle; or

11 (16) the murdered individual was 60 years of age or
12 older and the death resulted from exceptionally brutal or
13 heinous behavior indicative of wanton cruelty; or

14 (17) the murdered individual was a disabled person
15 and the defendant knew or should have known that the
16 murdered individual was disabled. For purposes of this
17 paragraph (17), "disabled person" means a person who
18 suffers from a permanent physical or mental impairment
19 resulting from disease, an injury, a functional disorder,
20 or a congenital condition that renders the person
21 incapable of adequately providing for his or her own
22 health or personal care; or

23 (18) the murder was committed by reason of any
24 person's activity as a community policing volunteer or to
25 prevent any person from engaging in activity as a
26 community policing volunteer; or

27 (19) the murdered individual was subject to an
28 order of protection and the murder was committed by a
29 person against whom the same order of protection was
30 issued under the Illinois Domestic Violence Act of 1986;
31 or

32 (20) the murdered individual was known by the
33 defendant to be a teacher or other person employed in any
34 school and the teacher or other employee is upon the

1 grounds of a school or grounds adjacent to a school, or
2 is in any part of a building used for school purposes; or

3 (21) the murder was committed by the defendant in
4 connection with or as a result of the offense of
5 terrorism as defined in Section 29D-30 of this Code.

6 (c) Consideration of factors in Aggravation and
7 Mitigation.

8 The court shall consider, or shall instruct the jury to
9 consider any aggravating and any mitigating factors which are
10 relevant to the imposition of the death penalty. Aggravating
11 factors may include but need not be limited to those factors
12 set forth in subsection (b). Mitigating factors may include
13 but need not be limited to the following:

14 (1) the defendant has no significant history of
15 prior criminal activity;

16 (2) the murder was committed while the defendant
17 was under the influence of extreme mental or emotional
18 disturbance, although not such as to constitute a defense
19 to prosecution;

20 (3) the murdered individual was a participant in
21 the defendant's homicidal conduct or consented to the
22 homicidal act;

23 (4) the defendant acted under the compulsion of
24 threat or menace of the imminent infliction of death or
25 great bodily harm;

26 (5) the defendant was not personally present during
27 commission of the act or acts causing death;-

28 (6) the defendant's background includes a history
29 of extreme emotional or physical abuse;

30 (7) the defendant suffers from a reduced mental
31 capacity.

32 (d) Separate sentencing hearing.

33 Where requested by the State, the court shall conduct a
34 separate sentencing proceeding to determine the existence of

1 factors set forth in subsection (b) and to consider any
2 aggravating or mitigating factors as indicated in subsection
3 (c). The proceeding shall be conducted:

4 (1) before the jury that determined the defendant's
5 guilt; or

6 (2) before a jury impanelled for the purpose of the
7 proceeding if:

8 A. the defendant was convicted upon a plea of
9 guilty; or

10 B. the defendant was convicted after a trial
11 before the court sitting without a jury; or

12 C. the court for good cause shown discharges
13 the jury that determined the defendant's guilt; or

14 (3) before the court alone if the defendant waives
15 a jury for the separate proceeding.

16 (e) Evidence and Argument.

17 During the proceeding any information relevant to any of
18 the factors set forth in subsection (b) may be presented by
19 either the State or the defendant under the rules governing
20 the admission of evidence at criminal trials. Any
21 information relevant to any additional aggravating factors or
22 any mitigating factors indicated in subsection (c) may be
23 presented by the State or defendant regardless of its
24 admissibility under the rules governing the admission of
25 evidence at criminal trials. The State and the defendant
26 shall be given fair opportunity to rebut any information
27 received at the hearing.

28 (f) Proof.

29 The burden of proof of establishing the existence of any
30 of the factors set forth in subsection (b) is on the State
31 and shall not be satisfied unless established beyond a
32 reasonable doubt.

33 (g) Procedure - Jury.

34 If at the separate sentencing proceeding the jury finds

1 that none of the factors set forth in subsection (b) exists,
2 the court shall sentence the defendant to a term of
3 imprisonment under Chapter V of the Unified Code of
4 Corrections. If there is a unanimous finding by the jury
5 that one or more of the factors set forth in subsection (b)
6 exist, the jury shall consider aggravating and mitigating
7 factors as instructed by the court and shall determine
8 whether the sentence of death shall be imposed. If the jury
9 determines unanimously, after weighing the factors in
10 aggravation and mitigation, that death is the appropriate
11 sentence ~~that there are no mitigating factors--sufficient--to~~
12 ~~preclude--the--imposition--of--the--death--sentence,~~ the court
13 shall sentence the defendant to death. If the court does not
14 concur with the jury determination that death is the
15 appropriate sentence, the court shall set forth reasons in
16 writing including what facts or circumstances the court
17 relied upon, along with any relevant documents, that
18 compelled the court to non-concur with the sentence. This
19 document and any attachments shall be part of the record for
20 appellate review.

21 If after weighing the factors in aggravation and
22 mitigation, one or more jurors determines that death is not
23 the appropriate sentence, ~~Unless the jury--unanimously--finds~~
24 ~~that--there--are--no--mitigating--factors--sufficient--to--preclude~~
25 ~~the--imposition--of--the--death--sentence~~ the court shall sentence
26 the defendant to a term of imprisonment under Chapter V of
27 the Unified Code of Corrections.

28 (h) Procedure - No Jury.

29 In a proceeding before the court alone, if the court
30 finds that none of the factors found in subsection (b)
31 exists, the court shall sentence the defendant to a term of
32 imprisonment under Chapter V of the Unified Code of
33 Corrections.

34 If the Court determines that one or more of the factors

1 set forth in subsection (b) exists, the Court shall consider
2 any aggravating and mitigating factors as indicated in
3 subsection (c). If the Court determines, after weighing the
4 factors in aggravation and mitigation, that death is the
5 appropriate sentence ~~that--there--are--no--mitigating--factors~~
6 ~~sufficient-to-preclude-the-imposition-of-the-death--sentence,~~
7 the Court shall sentence the defendant to death.

8 If ~~Unless~~ the court finds that ~~there--are--no--mitigating~~
9 ~~factors-sufficient-to-preclude-the-imposition-of-the-sentence~~
10 ~~of death~~ is not the appropriate sentence, the court shall
11 sentence the defendant to a term of imprisonment under
12 Chapter V of the Unified Code of Corrections.

13 (h-5) Decertification as a capital case.

14 In a case in which the defendant has been found guilty of
15 first degree murder by a judge or jury, or a case on remand
16 for resentencing, and the State seeks the death penalty as an
17 appropriate sentence, a defendant may file a written motion
18 to decertify the case as a death penalty case if the court
19 makes a written finding that the only evidence supporting the
20 defendant's conviction is the uncorroborated testimony of an
21 informant witness, as defined in Section 115-21 of the Code
22 of Criminal Procedure of 1963, concerning the confession or
23 admission of the defendant or that the sole evidence against
24 the defendant is a single eyewitness or single accomplice
25 without any other corroborating evidence. If the court grants
26 defendant's motion to decertify the case as a capital case
27 under either of the grounds set forth above, the court shall
28 issue a written finding. The State may pursue its right to
29 appeal the decertification pursuant to Supreme Court Rule
30 604(a)(1). If the court denies defendant's motion to
31 decertify the case as a capital case, the matter shall
32 proceed to the eligibility phase of the sentencing hearing.

33 (i) Appellate Procedure.

34 The conviction and sentence of death shall be subject to

1 automatic review by the Supreme Court. Such review shall be
2 in accordance with rules promulgated by the Supreme Court.
3 The Illinois Supreme Court may overturn the death sentence,
4 and order the imposition of imprisonment under Chapter V of
5 the Unified Code of Corrections if the court finds that the
6 death sentence is fundamentally unjust as applied to the
7 particular case. If the Illinois Supreme Court finds that the
8 death sentence is fundamentally unjust as applied to the
9 particular case, independent of any procedural grounds for
10 relief, the Illinois Supreme Court shall issue a written
11 opinion explaining this finding.

12 (j) Disposition of reversed death sentence.

13 In the event that the death penalty in this Act is held
14 to be unconstitutional by the Supreme Court of the United
15 States or of the State of Illinois, any person convicted of
16 first degree murder shall be sentenced by the court to a term
17 of imprisonment under Chapter V of the Unified Code of
18 Corrections.

19 In the event that any death sentence pursuant to the
20 sentencing provisions of this Section is declared
21 unconstitutional by the Supreme Court of the United States or
22 of the State of Illinois, the court having jurisdiction over
23 a person previously sentenced to death shall cause the
24 defendant to be brought before the court, and the court shall
25 sentence the defendant to a term of imprisonment under
26 Chapter V of the Unified Code of Corrections.

27 (Source: P.A. 91-357, eff. 7-29-99; 91-434, eff. 1-1-00;
28 92-854, eff. 12-5-02.)

29 Section 15. The Code of Criminal Procedure of 1963 is
30 amended by changing Sections 114-13, 116-3, 122-1, and
31 122-2.1 and adding Article 107A and Sections 114-15, 115-21,
32 115-22, 116-5, and 122-2.2 as follows:

(725 ILCS 5/107A Art. heading new)

ARTICLE 107A. LINEUP AND PHOTO SPREAD PROCEDURE

(725 ILCS 5/107A-5 new)

Sec. 107A-5. Lineup and photo spread procedure.

(a) All lineups shall be photographed or otherwise recorded. These photographs shall be disclosed to the accused and his or her defense counsel during discovery proceedings as provided in Illinois Supreme Court Rules. All photographs of suspects shown to an eyewitness during the photo spread shall be disclosed to the accused and his or her defense counsel during discovery proceedings as provided in Illinois Supreme Court Rules.

(b) Each eyewitness who views a lineup or photo spread shall sign a form containing the following information:

(1) The suspect might not be in the lineup or photo spread and the eyewitness is not obligated to make an identification.

(2) The eyewitness should not assume that the person administering the lineup or photo spread knows which person is the suspect in the case.

(c) Suspects in a lineup or photo spread should not appear to be substantially different from "fillers" or "distracters" in the lineup or photo spread, based on the eyewitness' previous description of the perpetrator, or based on other factors that would draw attention to the suspect.

(725 ILCS 5/107A-10 new)

Sec. 107A-10. Pilot study on sequential lineup procedures.

(a) Legislative intent. Whereas the goal of a police investigation is to apprehend the person or persons responsible for committing a crime, and whereas studies have shown that the sequential method for photo and live lineups

1 increases the accuracy of positive identifications, it is
2 useful to conduct a pilot study in the field on the
3 effectiveness of the sequential method for lineup procedures.

4 (b) Establishment of pilot jurisdictions. The Department
5 of State Police shall select 3 police departments to
6 participate in a one-year pilot study on the effectiveness of
7 the sequential lineup method for photo and live lineup
8 procedures. One such pilot jurisdiction shall be a police
9 district within a police department in a municipality whose
10 population is at least 500,000 residents; one such pilot
11 jurisdiction shall be a police department in a municipality
12 whose population is at least 100,000 but less than 500,000;
13 and one such pilot jurisdiction shall be a police department
14 in a municipality whose population is less than 100,000. All
15 such pilot jurisdictions shall be selected no later than
16 January 1, 2004.

17 (c) Sequential lineup procedures in pilot jurisdictions.
18 For any offense alleged to have been committed in a pilot
19 jurisdiction on or after January 1, 2004, the lineup
20 identification procedure shall be presented in the sequential
21 method in which a witness is shown lineup participants one at
22 a time, using the following procedures:

23 (1) The witness shall be requested to state whether
24 the individual shown is the perpetrator of the crime
25 prior to viewing the next lineup participant. Only one
26 member of the lineup shall be a suspect and the remainder
27 shall be "fillers" who are not suspects but fit the
28 general description of the suspect;

29 (2) The lineup administrator shall be someone who
30 is not aware of which member of the lineup is the suspect
31 in the case; and

32 (3) Prior to presenting the lineup using the
33 sequential method the lineup administrator shall:

34 (A) Inform the witness that the perpetrator

1 may or may not be among those shown, and the witness
2 should not feel compelled to make an identification;

3 (B) Inform the witness that he or she will
4 view individuals one at a time and will be requested
5 to state whether the individual shown is the
6 perpetrator of the crime, prior to viewing the next
7 lineup participant; and

8 (C) Ask the witness to state in his or her own
9 words how sure he or she is that the person
10 identified is the actual suspect, and make the
11 witness's words part of the record.

12 (d) Application. This Section applies to any live
13 lineups that are composed and presented at a police station
14 and to all photo lineups regardless of where presented;
15 provided that this Section does not apply in police
16 investigations in which a spontaneous identification is
17 possible and no lineup procedure is being used. This Section
18 does not affect the right to counsel afforded by the U.S. or
19 Illinois Constitutions or State law at any stage of a
20 criminal proceeding.

21 (e) Training. The Department of State Police shall offer
22 training to police officers and any other appropriate
23 personnel on the sequential method of conducting lineup
24 procedures in the pilot jurisdictions and the requirements of
25 this Section. The Department of State Police may seek funding
26 for training from the Illinois Criminal Justice Information
27 Authority and the Illinois Law Enforcement Training Standards
28 Board if necessary.

29 (f) Report on the pilot study. The Department of State
30 Police shall offer information from each of the police
31 departments selected as a pilot jurisdiction with respect to
32 the effectiveness of the sequential method for lineup
33 procedures and shall file a report of its findings with the
34 Governor and the General Assembly no later than April 1,

1 2005.

2 (725 ILCS 5/114-13) (from Ch. 38, par. 114-13)

3 Sec. 114-13. Discovery in criminal cases.

4 (a) Discovery procedures in criminal cases shall be in
5 accordance with Supreme Court Rules.

6 (b) Any investigative, law enforcement, or other agency
7 responsible for investigating any homicide offense or
8 participating in an investigation of any homicide offense,
9 other than defense investigators, shall provide to the
10 authority prosecuting the offense all investigative material,
11 including but not limited to reports, memoranda, and field
12 notes, that have been generated by or have come into the
13 possession of the investigating agency concerning the
14 homicide offense being investigated. In addition, the
15 investigating agency shall provide to the prosecuting
16 authority any material or information, including but not
17 limited to reports, memoranda, and field notes, within its
18 possession or control that would tend to negate the guilt of
19 the accused of the offense charged or reduce his or her
20 punishment for the homicide offense. Every investigative and
21 law enforcement agency in this State shall adopt policies to
22 ensure compliance with these standards. Any investigative,
23 law enforcement, or other agency responsible for
24 investigating any "non-homicide felony" offense or
25 participating in an investigation of any "non-homicide
26 felony" offense, other than defense investigators, shall
27 provide to the authority prosecuting the offense all
28 investigative material, including but not limited to reports
29 and memoranda that have been generated by or have come into
30 the possession of the investigating agency concerning the
31 "non-homicide felony" offense being investigated. In
32 addition, the investigating agency shall provide to the
33 prosecuting authority any material or information, including

1 but not limited to reports, memoranda, and field notes,
2 within its possession or control that would tend to negate
3 the guilt of the accused of the "non-homicide felony" offense
4 charged or reduce his or her punishment for the "non-homicide
5 felony" offense. This obligation to furnish exculpatory
6 evidence exists whether the information was recorded or
7 documented in any form. Every investigative and law
8 enforcement agency in this State shall adopt policies to
9 ensure compliance with these standards.

10 (Source: Laws 1963, p. 2836.)

11 (725 ILCS 5/114-15 new)

12 Sec. 114-15. Mental retardation.

13 (a) In a first degree murder case in which the State
14 seeks the death penalty as an appropriate sentence, any party
15 may raise the issue of the defendant's mental retardation by
16 motion. A defendant wishing to raise the issue of his or her
17 mental retardation shall provide written notice to the State
18 and the court as soon as the defendant reasonably believes
19 such issue will be raised.

20 (b) The issue of the defendant's mental retardation
21 shall be determined in a pretrial hearing. The court shall be
22 the fact finder on the issue of the defendant's mental
23 retardation and shall determine the issue by a preponderance
24 of evidence in which the moving party has the burden of
25 proof. The court may appoint an expert in the field of mental
26 retardation. The defendant and the State may offer experts
27 from the field of mental retardation. The court shall
28 determine admissibility of evidence and qualification as an
29 expert.

30 (c) If after a plea of guilty to first degree murder, or
31 a finding of guilty of first degree murder in a bench trial,
32 or a verdict of guilty for first degree murder in a jury
33 trial, or on a matter remanded from the Supreme Court for

1 sentencing for first degree murder, and the State seeks the
2 death penalty as an appropriate sentence, the defendant may
3 raise the issue of defendant's mental retardation not at
4 eligibility but at aggravation and mitigation. The defendant
5 and the State may offer experts from the field of mental
6 retardation. The court shall determine admissibility of
7 evidence and qualification as an expert.

8 (d) In determining whether the defendant is mentally
9 retarded, the mental retardation must have manifested itself
10 by the age of 18. An intelligence quotient (IQ) of 75 or
11 below is presumptive evidence of mental retardation. IQ tests
12 and psychometric tests administered to the defendant must be
13 the kind and type recognized by experts in the field of
14 mental retardation. In order for the defendant to be
15 considered mentally retarded, a low IQ must be accompanied by
16 significant deficits in adaptive behavior in at least 2 of
17 the following skill areas: communication, self-care, social
18 or interpersonal skills, home living, self-direction,
19 academics, health and safety, use of community resources, and
20 work.

21 (e) Evidence of mental retardation that did not result
22 in disqualifying the case as a capital case, may be
23 introduced as evidence in mitigation during a capital
24 sentencing hearing. A failure of the court to determine that
25 the defendant is mentally retarded does not preclude the
26 court during trial from allowing evidence relating to mental
27 disability should the court deem it appropriate.

28 (f) If the court determines that a capital defendant is
29 mentally retarded, the case shall no longer be considered a
30 capital case and the procedural guidelines established for
31 capital cases shall no longer be applicable to the defendant.
32 In that case, the defendant, if convicted, shall be sentenced
33 under the sentencing provisions of Chapter V of the Unified
34 Code of Corrections. A denial of such a petition may be

1 appealed to the Illinois Supreme Court.

2 (g) If the court determines at a pretrial hearing that a
3 capital defendant is mentally retarded, and the State does
4 not appeal pursuant to Supreme Court Rule 604, the case shall
5 no longer be considered a capital case and the procedural
6 guidelines established for capital cases shall no longer be
7 applicable to the defendant. In that case, the defendant
8 shall be sentenced under the sentencing provisions of Chapter
9 V of the Unified Code of Corrections.

10 (725 ILCS 5/115-21 new)

11 Sec. 115-21. Informant testimony.

12 (a) For the purposes of this Section, "informant" means
13 someone who is purporting to testify about admissions made to
14 him or her by the accused while incarcerated in a penal
15 institution contemporaneously.

16 (b) This Section applies to any capital case in which
17 the prosecution attempts to introduce evidence of
18 incriminating statements made by the accused to an informant.

19 (c) In any case under this Section, the prosecution
20 shall timely disclose in discovery:

21 (1) the complete criminal history of the informant;

22 (2) any deal, promise, inducement, or benefit that
23 the offering party has made or will make in the future to
24 the informant;

25 (3) the statements made by the accused;

26 (4) the time and place of the statements, the time
27 and place of their disclosure to law enforcement
28 officials, and the names of all persons who were present
29 when the statements were made;

30 (5) whether at any time the informant recanted that
31 testimony or statement and, if so, the time and place of
32 the recantation, the nature of the recantation, and the
33 names of the persons who were present at the recantation;

1 (6) other cases in which the informant testified,
2 provided that the existence of such testimony can be
3 ascertained through reasonable inquiry and whether the
4 informant received any promise, inducement, or benefit in
5 exchange for or subsequent to that testimony or
6 statement; and

7 (7) any other information relevant to the
8 informant's credibility.

9 (d) In any case under this Section, the prosecution must
10 timely disclose its intent to introduce the testimony of an
11 informant. The court shall conduct a hearing to determine
12 whether the testimony of the informant is reliable, unless
13 the defendant waives such a hearing. If the prosecution
14 fails to show by a preponderance of the evidence that the
15 informant's testimony is reliable, the court shall not allow
16 the testimony to be heard at trial. At this hearing, the
17 court shall consider the factors enumerated in subsection (c)
18 as well as any other factors relating to reliability.

19 (e) A hearing required under subsection (d) does not
20 apply to statements covered under subsection (b) that are
21 lawfully recorded.

22 (f) This Section applies to all death penalty
23 prosecutions initiated on or after the effective date of this
24 amendatory Act of the 93rd General Assembly.

25 (725 ILCS 5/115-22 new)

26 Sec. 115-22. Witness inducements. When the State
27 intends to introduce the testimony of a witness in a capital
28 case, the State shall, before trial, disclose to the
29 defendant and to his or her defense counsel the following
30 information, which shall be reduced to writing:

31 (1) whether the witness has received anything,
32 including pay, immunity from prosecution, leniency in
33 prosecution, or personal advantage, in exchange for

1 testimony;

2 (2) any other case in which the witness testified
3 or offered statements against an individual but was not
4 called, and whether the statements were admitted in the
5 case, and whether the witness received any deal, promise,
6 inducement, or benefit in exchange for that testimony or
7 statement;

8 (3) whether the witness has ever changed his or her
9 testimony;

10 (4) the criminal history of the witness; and

11 (5) any other evidence relevant to the credibility
12 of the witness.

13 (725 ILCS 5/116-3)

14 Sec. 116-3. Motion for fingerprint or forensic testing
15 not available at trial regarding actual innocence.

16 (a) A defendant may make a motion before the trial court
17 that entered the judgment of conviction in his or her case
18 for the performance of fingerprint or forensic DNA testing,
19 including comparison analysis of genetic marker groupings of
20 the evidence collected by criminal justice agencies pursuant
21 to the alleged offense, to those of the defendant, to those
22 of other forensic evidence, and to those maintained under
23 subsection (f) of Section 5-4-3 of the Unified Code of
24 Corrections, on evidence that was secured in relation to the
25 trial which resulted in his or her conviction, but which was
26 not subject to the testing which is now requested because the
27 technology for the testing was not available at the time of
28 trial. Reasonable notice of the motion shall be served upon
29 the State.

30 (b) The defendant must present a prima facie case that:

31 (1) identity was the issue in the trial which
32 resulted in his or her conviction; and

33 (2) the evidence to be tested has been subject to a

1 chain of custody sufficient to establish that it has not
2 been substituted, tampered with, replaced, or altered in
3 any material aspect.

4 (c) The trial court shall allow the testing under
5 reasonable conditions designed to protect the State's
6 interests in the integrity of the evidence and the testing
7 process upon a determination that:

8 (1) the result of the testing has the scientific
9 potential to produce new, noncumulative evidence
10 materially relevant to the defendant's assertion of
11 actual innocence even though the results may not
12 completely exonerate the defendant;

13 (2) the testing requested employs a scientific
14 method generally accepted within the relevant scientific
15 community.

16 (Source: P.A. 90-141, eff. 1-1-98.)

17 (725 ILCS 5/116-5 new)

18 Sec. 116-5. Motion for DNA database search (genetic
19 marker groupings comparison analysis).

20 (a) Upon motion by a defendant charged with any offense
21 where DNA evidence may be material to the defense
22 investigation or relevant at trial, a court may order a DNA
23 database search by the Department of State Police. Such
24 analysis may include comparing:

25 (1) the genetic profile from forensic evidence that
26 was secured in relation to the trial against the genetic
27 profile of the defendant,

28 (2) the genetic profile of items of forensic
29 evidence secured in relation to trial to the genetic
30 profile of other forensic evidence secured in relation to
31 trial, or

32 (3) the genetic profiles referred to in
33 subdivisions (1) and (2) against:

1 (i) genetic profiles of offenders maintained
2 under subsection (f) of Section 5-4-3 of the Unified
3 Code of Corrections, or

4 (ii) genetic profiles, including but not
5 limited to, profiles from unsolved crimes maintained
6 in state or local DNA databases by law enforcement
7 agencies.

8 (b) If appropriate federal criteria are met, the court
9 may order the Department of State Police to request the
10 National DNA index system to search its database of genetic
11 profiles.

12 (c) If requested by the defense, a defense
13 representative shall be allowed to view any genetic marker
14 grouping analysis conducted by the Department of State
15 Police. The defense shall be provided with copies of all
16 documentation, correspondence, including digital
17 correspondence, notes, memoranda, and reports generated in
18 relation to the analysis.

19 (d) Reasonable notice of the motion shall be served upon
20 the State.

21 (725 ILCS 5/122-1) (from Ch. 38, par. 122-1)

22 Sec. 122-1. Petition in the trial court.

23 (a) Any person imprisoned in the penitentiary may
24 institute a proceeding under this Article if the person who
25 asserts that:

26 (1) in the proceedings which resulted in his or her
27 conviction there was a substantial denial of his or her
28 rights under the Constitution of the United States or of
29 the State of Illinois or both; or may--institute-a
30 proceeding-under-this-Article.

31 (2) the death penalty was imposed and there is
32 newly discovered evidence not available to the person at
33 the time of the proceeding that resulted in his or her

1 conviction that establishes a substantial basis to
2 believe that the defendant is actually innocent by clear
3 and convincing evidence.

4 (a-5) A proceeding under paragraph (2) of subsection (a)
5 may be commenced within a reasonable period of time after the
6 person's conviction notwithstanding any other provisions of
7 this Article. In such a proceeding regarding actual
8 innocence, if the court determines the petition is frivolous
9 or is patently without merit, it shall dismiss the petition
10 in a written order, specifying the findings of fact and
11 conclusions of law it made in reaching its decision. Such
12 order of dismissal is a final judgment and shall be served
13 upon the petitioner by certified mail within 10 days of its
14 entry.

15 (b) The proceeding shall be commenced by filing with the
16 clerk of the court in which the conviction took place a
17 petition (together with a copy thereof) verified by
18 affidavit. Petitioner shall also serve another copy upon the
19 State's Attorney by any of the methods provided in Rule 7 of
20 the Supreme Court. The clerk shall docket the petition for
21 consideration by the court pursuant to Section 122-2.1 upon
22 his or her receipt thereof and bring the same promptly to the
23 attention of the court.

24 (c) Except as otherwise provided in subsection (a-5), if
25 the petitioner is under sentence of death, no proceedings
26 under this Article shall be commenced more than 6 months
27 after the denial of a petition for certiorari to the United
28 States Supreme Court on direct appeal, or more than 6 months
29 from the date for filing such a petition if none is filed,
30 unless the petitioner alleges facts showing that the delay
31 was not due to his or her culpable negligence.

32 When a defendant has a sentence other than death, no
33 proceedings under this Article shall be commenced more than 6
34 months after the denial of the Petition for Leave to Appeal

1 to the Illinois Supreme Court, or more than 6 months from the
2 date for filing such a petition if none is filed, unless the
3 petitioner alleges facts showing that the delay was not due
4 to his or her culpable negligence.

5 This limitation does not apply to a petition advancing a
6 claim of actual innocence. no-proceedings-under-this-Article
7 shall-be-commenced-more-than-6-months-after-the-denial--of--a
8 petition--for--leave--to-appeal-or-the-date-for-filing-such-a
9 petition-if-none-is-filed-or-more--than--45--days--after--the
10 defendant--files--his--or--her--brief--in--the--appeal-of-the
11 sentence-before-the-Illinois-Supreme-Court-(or-more--than--45
12 days--after--the--deadline--for-the-filing-of-the-defendant's
13 brief-with-the-Illinois-Supreme-Court-if-no-brief--is--filed)
14 or--3-years-from-the-date-of-conviction, whichever is sooner,
15 unless the petitioner alleges facts showing that the delay
16 was not due to his or her culpable negligence.

17 (d) A person seeking relief by filing a petition under
18 this Section must specify in the petition or its heading that
19 it is filed under this Section. A trial court that has
20 received a petition complaining of a conviction or sentence
21 that fails to specify in the petition or its heading that it
22 is filed under this Section need not evaluate the petition to
23 determine whether it could otherwise have stated some grounds
24 for relief under this Article.

25 (e) A proceeding under this Article may not be commenced
26 on behalf of a defendant who has been sentenced to death
27 without the written consent of the defendant, unless the
28 defendant, because of a mental or physical condition, is
29 incapable of asserting his or her own claim.

30 (Source: P.A. 89-284, eff. 1-1-96; 89-609, eff. 1-1-97;
31 89-684, eff. 6-1-97; 90-14, eff. 7-1-97.)

32 (725 ILCS 5/122-2.1) (from Ch. 38, par. 122-2.1)

33 Sec. 122-2.1. (a) Within 90 days after the filing and

1 docketing of each petition, the court shall examine such
2 petition and enter an order thereon pursuant to this Section.

3 (1) If the petitioner is under sentence of death
4 and is without counsel and alleges that he is without
5 means to procure counsel, he shall state whether or not
6 he wishes counsel to be appointed to represent him. If
7 appointment of counsel is so requested, the court shall
8 appoint counsel if satisfied that the petitioner has no
9 means to procure counsel.

10 (2) If the petitioner is sentenced to imprisonment
11 and the court determines the petition is frivolous or is
12 patently without merit, it shall dismiss the petition in
13 a written order, specifying the findings of fact and
14 conclusions of law it made in reaching its decision.
15 Such order of dismissal is a final judgment and shall be
16 served upon the petitioner by certified mail within 10
17 days of its entry.

18 (b) If the petition is not dismissed pursuant to this
19 Section, the court shall order the petition to be docketed
20 for further consideration in accordance with Sections 122-4
21 through 122-6. If the petitioner is under sentence of death,
22 the court shall order the petition to be docketed for further
23 consideration and hearing within one year of the filing of
24 the petition.

25 (c) In considering a petition pursuant to this Section,
26 the court may examine the court file of the proceeding in
27 which the petitioner was convicted, any action taken by an
28 appellate court in such proceeding and any transcripts of
29 such proceeding.

30 (Source: P.A. 86-655; 87-904.)

31 (725 ILCS 5/122-2.2 new)

32 Sec. 122-2.2. Mental retardation and post-conviction
33 relief.

1 (a) In cases where no determination of mental
2 retardation was made and a defendant has been convicted of
3 first-degree murder, sentenced to death, and is in custody
4 pending execution of the sentence of death, the following
5 procedures shall apply:

6 (1) Notwithstanding any other provision of law or
7 rule of court, a defendant may seek relief from the death
8 sentence through a petition for post-conviction relief
9 under this Article alleging that the defendant was
10 mentally retarded as defined in Section 114-15 at the
11 time the offense was alleged to have been committed.

12 (2) The petition must be filed within 180 days of
13 the effective date of this amendatory Act of the 93rd
14 General Assembly or within 180 days of the issuance of
15 the mandate by the Illinois Supreme Court setting the
16 date of execution, whichever is later.

17 (3) All other provisions of this Article governing
18 petitions for post-conviction relief shall apply to a
19 petition for post-conviction relief alleging mental
20 retardation.

21 Section 20. The Capital Crimes Litigation Act is amended
22 by changing Sections 15 and 19 as follows:

23 (725 ILCS 124/15)

24 (Section scheduled to be repealed on July 1, 2004)

25 Sec. 15. Capital Litigation Trust Fund.

26 (a) The Capital Litigation Trust Fund is created as a
27 special fund in the State Treasury. The Trust Fund shall be
28 administered by the State Treasurer to provide moneys for the
29 appropriations to be made, grants to be awarded, and
30 compensation and expenses to be paid under this Act. All
31 interest earned from the investment or deposit of moneys
32 accumulated in the Trust Fund shall, under Section 4.1 of the

1 State Finance Act, be deposited into the Trust Fund.

2 (b) Moneys deposited into the Trust Fund shall not be
3 considered general revenue of the State of Illinois.

4 (c) Moneys deposited into the Trust Fund shall be used
5 exclusively for the purposes of providing funding for the
6 prosecution and defense of capital cases as provided in this
7 Act and shall not be appropriated, loaned, or in any manner
8 transferred to the General Revenue Fund of the State of
9 Illinois.

10 (d) Every fiscal year the State Treasurer shall transfer
11 from the General Revenue Fund to the Capital Litigation Trust
12 Fund an amount equal to the full amount of moneys
13 appropriated by the General Assembly (both by original and
14 supplemental appropriation), less any unexpended balance from
15 the previous fiscal year, from the Capital Litigation Trust
16 Fund for the specific purpose of making funding available for
17 the prosecution and defense of capital cases. The Public
18 Defender and State's Attorney in Cook County, the State
19 Appellate Defender, the State's Attorneys Appellate
20 Prosecutor, and the Attorney General shall make annual
21 requests for appropriations from the Trust Fund.

22 (1) The Public Defender in Cook County shall
23 request appropriations to the State Treasurer for
24 expenses incurred by the Public Defender and for funding
25 for private appointed defense counsel in Cook County.

26 (2) The State's Attorney in Cook County shall
27 request an appropriation to the State Treasurer for
28 expenses incurred by the State's Attorney.

29 (3) The State Appellate Defender shall request a
30 direct appropriation from the Trust Fund for expenses
31 incurred by the State Appellate Defender in providing
32 assistance to trial attorneys under item (c)(5) of
33 Section 10 of the State Appellate Defender Act and an
34 appropriation to the State Treasurer for payments from

1 the Trust Fund for the defense of cases in counties other
2 than Cook County.

3 (4) The State's Attorneys Appellate Prosecutor
4 shall request a direct appropriation from the Trust Fund
5 to pay expenses incurred by the State's Attorneys
6 Appellate Prosecutor and an appropriation to the State
7 Treasurer for payments from the Trust Fund for expenses
8 incurred by State's Attorneys in counties other than Cook
9 County.

10 (5) The Attorney General shall request a direct
11 appropriation from the Trust Fund to pay expenses
12 incurred by the Attorney General in assisting the State's
13 Attorneys in counties other than Cook County.

14 The Public Defender and State's Attorney in Cook County,
15 the State Appellate Defender, the State's Attorneys Appellate
16 Prosecutor, and the Attorney General may each request
17 supplemental appropriations from the Trust Fund during the
18 fiscal year.

19 (e) Moneys in the Trust Fund shall be expended only as
20 follows:

21 (1) To pay the State Treasurer's costs to
22 administer the Trust Fund. The amount for this purpose
23 may not exceed 5% in any one fiscal year of the amount
24 otherwise appropriated from the Trust Fund in the same
25 fiscal year.

26 (2) To pay the capital litigation expenses of trial
27 defense including, but not limited to, DNA testing,
28 including DNA testing under Section 116-3 of the Code of
29 Criminal Procedure of 1963, analysis, and expert
30 testimony, investigatory and other assistance, expert,
31 forensic, and other witnesses, and mitigation
32 specialists, and grants and aid provided to public
33 defenders or assistance to attorneys who have been
34 appointed by the court to represent defendants who are

1 charged with capital crimes.

2 (3) To pay the compensation of trial attorneys,
3 other than public defenders, who have been appointed by
4 the court to represent defendants who are charged with
5 capital crimes.

6 (4) To provide State's Attorneys with funding for
7 capital litigation expenses including, but not limited
8 to, investigatory and other assistance and expert,
9 forensic, and other witnesses necessary to prosecute
10 capital cases. State's Attorneys in any county other
11 than Cook County seeking funding for capital litigation
12 expenses including, but not limited to, investigatory and
13 other assistance and expert, forensic, or other witnesses
14 under this Section may request that the State's Attorneys
15 Appellate Prosecutor or the Attorney General, as the case
16 may be, certify the expenses as reasonable, necessary,
17 and appropriate for payment from the Trust Fund, on a
18 form created by the State Treasurer. Upon certification
19 of the expenses and delivery of the certification to the
20 State Treasurer, the Treasurer shall pay the expenses
21 directly from the Capital Litigation Trust Fund if there
22 are sufficient moneys in the Trust Fund to pay the
23 expenses.

24 (5) To provide financial support through the
25 Attorney General pursuant to the Attorney General Act for
26 the several county State's Attorneys outside of Cook
27 County, but shall not be used to increase personnel for
28 the Attorney General's Office.

29 (6) To provide financial support through the
30 State's Attorneys Appellate Prosecutor pursuant to the
31 State's Attorneys Appellate Prosecutor's Act for the
32 several county State's Attorneys outside of Cook County,
33 but shall not be used to increase personnel for the
34 State's Attorneys Appellate Prosecutor.

1 (7) To provide financial support to the State
2 Appellate Defender pursuant to the State Appellate
3 Defender Act.

4 Moneys expended from the Trust Fund shall be in addition
5 to county funding for Public Defenders and State's Attorneys,
6 and shall not be used to supplant or reduce ordinary and
7 customary county funding.

8 (f) Moneys in the Trust Fund shall be appropriated to
9 the State Appellate Defender, the State's Attorneys Appellate
10 Prosecutor, the Attorney General, and the State Treasurer.
11 The State Appellate Defender shall receive an appropriation
12 from the Trust Fund to enable it to provide assistance to
13 appointed defense counsel throughout the State and to Public
14 Defenders in counties other than Cook. The State's Attorneys
15 Appellate Prosecutor and the Attorney General shall receive
16 appropriations from the Trust Fund to enable them to provide
17 assistance to State's Attorneys in counties other than Cook
18 County. Moneys shall be appropriated to the State Treasurer
19 to enable the Treasurer (i) to make grants to Cook County,
20 (ii) to pay the expenses of Public Defenders and State's
21 Attorneys in counties other than Cook County, (iii) to pay
22 the expenses and compensation of appointed defense counsel in
23 counties other than Cook County, and (iv) to pay the costs of
24 administering the Trust Fund. All expenditures and grants
25 made from the Trust Fund shall be subject to audit by the
26 Auditor General.

27 (g) For Cook County, grants from the Trust Fund shall be
28 made and administered as follows:

29 (1) For each State fiscal year, the State's
30 Attorney and Public Defender must each make a separate
31 application to the State Treasurer for capital litigation
32 grants.

33 (2) The State Treasurer shall establish rules and
34 procedures for grant applications. The rules shall

1 require the Cook County Treasurer as the grant recipient
2 to report on a periodic basis to the State Treasurer how
3 much of the grant has been expended, how much of the
4 grant is remaining, and the purposes for which the grant
5 has been used. The rules may also require the Cook
6 County Treasurer to certify on a periodic basis that
7 expenditures of the funds have been made for expenses
8 that are reasonable, necessary, and appropriate for
9 payment from the Trust Fund.

10 (3) The State Treasurer shall make the grants to
11 the Cook County Treasurer as soon as possible after the
12 beginning of the State fiscal year.

13 (4) The State's Attorney or Public Defender may
14 apply for supplemental grants during the fiscal year.

15 (5) Grant moneys shall be paid to the Cook County
16 Treasurer in block grants and held in separate accounts
17 for the State's Attorney, the Public Defender, and court
18 appointed defense counsel other than the Cook County
19 Public Defender, respectively, for the designated fiscal
20 year, and are not subject to county appropriation.

21 (6) Expenditure of grant moneys under this
22 subsection (g) is subject to audit by the Auditor
23 General.

24 (7) The Cook County Treasurer shall immediately
25 make payment from the appropriate separate account in the
26 county treasury for capital litigation expenses to the
27 State's Attorney, Public Defender, or court appointed
28 defense counsel other than the Public Defender, as the
29 case may be, upon order of the State's Attorney, Public
30 Defender or the court, respectively.

31 (h) If a defendant in a capital case in Cook County is
32 represented by court appointed counsel other than the Cook
33 County Public Defender, the appointed counsel shall petition
34 the court for an order directing the Cook County Treasurer to

1 pay the court appointed counsel's reasonable and necessary
2 compensation and capital litigation expenses from grant
3 moneys provided from the Trust Fund. These petitions shall be
4 considered in camera. Orders denying petitions for
5 compensation or expenses are final. Counsel may not petition
6 for expenses that may have been provided or compensated by
7 the State Appellate Defender under item (c)(5) of Section 10
8 of the State Appellate Defender Act.

9 (i) In counties other than Cook County, and excluding
10 capital litigation expenses or services that may have been
11 provided by the State Appellate Defender under item (c)(5) of
12 Section 10 of the State Appellate Defender Act:

13 (1) Upon certification by the circuit court, on a
14 form created by the State Treasurer, that all or a
15 portion of the expenses are reasonable, necessary, and
16 appropriate for payment from the Trust Fund and the
17 court's delivery of the certification to the Treasurer,
18 the Treasurer shall pay the certified expenses of Public
19 Defenders from the money appropriated to the Treasurer
20 for capital litigation expenses of Public Defenders in
21 any county other than Cook County, if there are
22 sufficient moneys in the Trust Fund to pay the expenses.

23 (2) If a defendant in a capital case is represented
24 by court appointed counsel other than the Public
25 Defender, the appointed counsel shall petition the court
26 to certify compensation and capital litigation expenses
27 including, but not limited to, investigatory and other
28 assistance, expert, forensic, and other witnesses, and
29 mitigation specialists as reasonable, necessary, and
30 appropriate for payment from the Trust Fund. Upon
31 certification on a form created by the State Treasurer of
32 all or a portion of the compensation and expenses
33 certified as reasonable, necessary, and appropriate for
34 payment from the Trust Fund and the court's delivery of

1 the certification to the Treasurer, the State Treasurer
2 shall pay the certified compensation and expenses from
3 the money appropriated to the Treasurer for that purpose,
4 if there are sufficient moneys in the Trust Fund to make
5 those payments.

6 (3) A petition for capital litigation expenses
7 under this subsection shall be considered in camera.
8 Orders denying petitions for compensation or expenses are
9 final.

10 (j) If the Trust Fund is discontinued or dissolved by an
11 Act of the General Assembly or by operation of law, any
12 balance remaining in the Trust Fund shall be returned to the
13 General Revenue Fund after deduction of administrative costs,
14 any other provision of this Act to the contrary
15 notwithstanding.

16 (Source: P.A. 91-589, eff. 1-1-00.)

17 (725 ILCS 124/19)

18 (Section scheduled to be repealed on July 1, 2004)

19 Sec. 19. Report; repeal.

20 (a) The Cook County Public Defender, the Cook County
21 State's Attorney, the State Appellate Defender, the State's
22 Attorneys Appellate Prosecutor, and the Attorney General
23 shall each report separately to the General Assembly by
24 January 1, 2004 detailing the amounts of money received by
25 them through this Act, the uses for which those funds were
26 expended, the balances then in the Capital Litigation Trust
27 Fund or county accounts, as the case may be, dedicated to
28 them for the use and support of Public Defenders, appointed
29 trial defense counsel, and State's Attorneys, as the case may
30 be. The report shall describe and discuss the need for
31 continued funding through the Fund and contain any
32 suggestions for changes to this Act.

33 (b) (Blank). Unless--the--General---Assembly---provides

~~otherwise, this Act is repealed on July 1, 2004.~~

(Source: P.A. 91-589, eff. 1-1-00.)

Section 25. The Unified Code of Corrections is amended by changing Section 5-4-3 as follows:

(730 ILCS 5/5-4-3) (from Ch. 38, par. 1005-4-3)

Sec. 5-4-3. Persons convicted of, or found delinquent for, certain offenses or institutionalized as sexually dangerous; specimens; genetic marker groups.

(a) Any person convicted of, found guilty under the Juvenile Court Act of 1987 for, or who received a disposition of court supervision for, a qualifying offense or attempt of a qualifying offense, convicted or found guilty of any offense classified as a felony under Illinois law, found guilty or given supervision for any offense classified as a felony under the Juvenile Court Act of 1987, or institutionalized as a sexually dangerous person under the Sexually Dangerous Persons Act, or committed as a sexually violent person under the Sexually Violent Persons Commitment Act shall, regardless of the sentence or disposition imposed, be required to submit specimens of blood, saliva, or tissue to the Illinois Department of State Police in accordance with the provisions of this Section, provided such person is:

(1) convicted of a qualifying offense or attempt of a qualifying offense on or after July 1, 1990 the ~~effective--date--of--this--amendatory--Act--of--1989,~~ and sentenced to a term of imprisonment, periodic imprisonment, fine, probation, conditional discharge or any other form of sentence, or given a disposition of court supervision for the offense; ~~or~~

(1.5) found guilty or given supervision under the Juvenile Court Act of 1987 for a qualifying offense or attempt of a qualifying offense on or after January 1,

1 1997; ~~the-effective-date-of-this-amendatory-Act-of-1996,~~
2 ~~or~~

3 (2) ordered institutionalized as a sexually
4 dangerous person on or after July 1, 1990; ~~the--effective~~
5 ~~date-of-this-amendatory-Act-of-1989--or~~

6 (3) convicted of a qualifying offense or attempt of
7 a qualifying offense before July 1, 1990 ~~the-effective~~
8 ~~date-of-this-amendatory-Act--of--1989~~ and is presently
9 confined as a result of such conviction in any State
10 correctional facility or county jail or is presently
11 serving a sentence of probation, conditional discharge or
12 periodic imprisonment as a result of such conviction; ~~i--or~~

13 (3.5) convicted or found guilty of any offense
14 classified as a felony under Illinois law or found guilty
15 or given supervision for such an offense under the
16 Juvenile Court Act of 1987 on or after August 22, 2002; ~~i~~
17 ~~the-effective-date--of-this-amendatory-Act--of--the--92nd~~
18 ~~General-Assembly--or~~

19 (4) presently institutionalized as a sexually
20 dangerous person or presently institutionalized as a
21 person found guilty but mentally ill of a sexual offense
22 or attempt to commit a sexual offense; ~~or~~

23 (4.5) ordered committed as a sexually violent
24 person on or after the effective date of the Sexually
25 Violent Persons Commitment Act; or

26 (5) seeking transfer to or residency in Illinois
27 under Sections 3-3-11.05 through 3-3-11.5 of the Unified
28 Code of Corrections and the Interstate Compact for Adult
29 Offender Supervision or the Interstate Agreements on
30 Sexually Dangerous Persons Act.

31 Notwithstanding other provisions of this Section, any
32 person incarcerated in a facility of the Illinois Department
33 of Corrections on or after August 22, 2002 ~~the-effective-date~~
34 ~~of-this-amendatory-Act-of-the-92nd-General-Assembly~~ shall be

1 required to submit a specimen of blood, saliva, or tissue
2 prior to his or her release on parole or mandatory supervised
3 release, as a condition of his or her parole or mandatory
4 supervised release.

5 (a-5) Any person who was otherwise convicted of or
6 received a disposition of court supervision for any other
7 offense under the Criminal Code of 1961 or who was found
8 guilty or given supervision for such a violation under the
9 Juvenile Court Act of 1987, may, regardless of the sentence
10 imposed, be required by an order of the court to submit
11 specimens of blood, saliva, or tissue to the Illinois
12 Department of State Police in accordance with the provisions
13 of this Section.

14 (b) Any person required by paragraphs (a)(1), (a)(1.5),
15 (a)(2), (a)(3.5), and (a-5) to provide specimens of blood,
16 saliva, or tissue shall provide specimens of blood, saliva,
17 or tissue within 45 days after sentencing or disposition at a
18 collection site designated by the Illinois Department of
19 State Police.

20 (c) Any person required by paragraphs (a)(3), (a)(4),
21 and (a)(4.5) to provide specimens of blood, saliva, or tissue
22 shall be required to provide such samples prior to final
23 discharge, parole, or release at a collection site designated
24 by the Illinois Department of State Police.

25 (c-5) Any person required by paragraph (a)(5) to provide
26 specimens of blood, saliva, or tissue shall, where feasible,
27 be required to provide the specimens before being accepted
28 for conditioned residency in Illinois under the interstate
29 compact or agreement, but no later than 45 days after arrival
30 in this State.

31 (c-6) The Illinois Department of State Police may
32 determine which type of specimen or specimens, blood, saliva,
33 or tissue, is acceptable for submission to the Division of
34 Forensic Services for analysis.

1 (d) The Illinois Department of State Police shall
2 provide all equipment and instructions necessary for the
3 collection of blood samples. The collection of samples shall
4 be performed in a medically approved manner. Only a
5 physician authorized to practice medicine, a registered nurse
6 or other qualified person trained in venipuncture may
7 withdraw blood for the purposes of this Act. The samples
8 shall thereafter be forwarded to the Illinois Department of
9 State Police, Division of Forensic Services, for analysis and
10 categorizing into genetic marker groupings.

11 (d-1) The Illinois Department of State Police shall
12 provide all equipment and instructions necessary for the
13 collection of saliva samples. The collection of saliva
14 samples shall be performed in a medically approved manner.
15 Only a person trained in the instructions promulgated by the
16 Illinois State Police on collecting saliva may collect saliva
17 for the purposes of this Section. The samples shall
18 thereafter be forwarded to the Illinois Department of State
19 Police, Division of Forensic Services, for analysis and
20 categorizing into genetic marker groupings.

21 (d-2) The Illinois Department of State Police shall
22 provide all equipment and instructions necessary for the
23 collection of tissue samples. The collection of tissue
24 samples shall be performed in a medically approved manner.
25 Only a person trained in the instructions promulgated by the
26 Illinois State Police on collecting tissue may collect tissue
27 for the purposes of this Section. The samples shall
28 thereafter be forwarded to the Illinois Department of State
29 Police, Division of Forensic Services, for analysis and
30 categorizing into genetic marker groupings.

31 (d-5) To the extent that funds are available, the
32 Illinois Department of State Police shall contract with
33 qualified personnel and certified laboratories for the
34 collection, analysis, and categorization of known samples.

1 (e) The genetic marker groupings shall be maintained by
2 the Illinois Department of State Police, Division of Forensic
3 Services.

4 (f) The genetic marker grouping analysis information
5 obtained pursuant to this Act shall be confidential and shall
6 be released only to peace officers of the United States, of
7 other states or territories, of the insular possessions of
8 the United States, of foreign countries duly authorized to
9 receive the same, to all peace officers of the State of
10 Illinois and to all prosecutorial agencies, and to defense
11 counsel as provided by Section 116-5 of the Code of Criminal
12 Procedure of 1963. The genetic marker grouping analysis
13 information obtained pursuant to this Act shall be used only
14 for (i) valid law enforcement identification purposes and as
15 required by the Federal Bureau of Investigation for
16 participation in the National DNA database or (ii) technology
17 validation purposes or (iii) assisting in the defense of the
18 criminally accused pursuant to Section 116-5 of the Code of
19 Criminal Procedure of 1963. Notwithstanding any other
20 statutory provision to the contrary, all information obtained
21 under this Section shall be maintained in a single State data
22 base, which may be uploaded into a national database, and
23 which information may be subject to expungement only as set
24 forth in subsection (f-1).

25 (f-1) Upon receipt of notification of a reversal of a
26 conviction based on actual innocence, or of the granting of a
27 pardon pursuant to Section 12 of Article V of the Illinois
28 Constitution, if that pardon document specifically states
29 that the reason for the pardon is the actual innocence of an
30 individual whose DNA record has been stored in the State or
31 national DNA identification index in accordance with this
32 Section by the Illinois Department of State Police, the DNA
33 record shall be expunged from the DNA identification index,
34 and the Department shall by rule prescribe procedures to

1 ensure that the record and any samples, analyses, or other
2 documents relating to such record, whether in the possession
3 of the Department or any law enforcement or police agency, or
4 any forensic DNA laboratory, including any duplicates or
5 copies thereof, are destroyed and a letter is sent to the
6 court verifying the expungement is completed.

7 (f-5) Any person who intentionally uses genetic marker
8 grouping analysis information, or any other information
9 derived from a DNA sample, beyond the authorized uses as
10 provided under this Section, or any other Illinois law, is
11 guilty of a Class 4 felony, and shall be subject to a fine of
12 not less than \$5,000.

13 (g) For the purposes of this Section, "qualifying
14 offense" means any of the following:

15 (1) any violation or inchoate violation of Section
16 11-6, 11-9.1, 11-11, 11-18.1, 12-15, or 12-16 of the
17 Criminal Code of 1961~~;~~7-07

18 (1.1) any violation or inchoate violation of
19 Section 9-1, 9-2, 10-1, 10-2, 12-11, 12-11.1, 18-1, 18-2,
20 18-3, 18-4, 19-1, or 19-2 of the Criminal Code of 1961
21 for which persons are convicted on or after July 1,
22 2001~~;~~7-07

23 (2) any former statute of this State which defined
24 a felony sexual offense~~;~~7-07

25 (3) (blank)~~;~~7-07

26 (4) any inchoate violation of Section 9-3.1,
27 11-9.3, 12-7.3, or 12-7.4 of the Criminal Code of 1961~~;~~7
28 or

29 (5) any violation or inchoate violation of Article
30 29D of the Criminal Code of 1961.

31 (g-5) (Blank).

32 (h) The Illinois Department of State Police shall be the
33 State central repository for all genetic marker grouping
34 analysis information obtained pursuant to this Act. The

1 Illinois Department of State Police may promulgate rules for
2 the form and manner of the collection of blood, saliva, or
3 tissue samples and other procedures for the operation of this
4 Act. The provisions of the Administrative Review Law shall
5 apply to all actions taken under the rules so promulgated.

6 (i) A person required to provide a blood, saliva, or
7 tissue specimen shall cooperate with the collection of the
8 specimen and any deliberate act by that person intended to
9 impede, delay or stop the collection of the blood, saliva, or
10 tissue specimen is a Class A misdemeanor.

11 (j) Any person required by subsection (a) to submit
12 specimens of blood, saliva, or tissue to the Illinois
13 Department of State Police for analysis and categorization
14 into genetic marker grouping, in addition to any other
15 disposition, penalty, or fine imposed, shall pay an analysis
16 fee of \$200. If the analysis fee is not paid at the time of
17 sentencing, the court shall establish a fee schedule by which
18 the entire amount of the analysis fee shall be paid in full,
19 such schedule not to exceed 24 months from the time of
20 conviction. The inability to pay this analysis fee shall not
21 be the sole ground to incarcerate the person.

22 (k) All analysis and categorization fees provided for by
23 subsection (j) shall be regulated as follows:

24 (1) The State Offender DNA Identification System
25 Fund is hereby created as a special fund in the State
26 Treasury.

27 (2) All fees shall be collected by the clerk of the
28 court and forwarded to the State Offender DNA
29 Identification System Fund for deposit. The clerk of the
30 circuit court may retain the amount of \$10 from each
31 collected analysis fee to offset administrative costs
32 incurred in carrying out the clerk's responsibilities
33 under this Section.

34 (3) Fees deposited into the State Offender DNA

1 Identification System Fund shall be used by Illinois
2 State Police crime laboratories as designated by the
3 Director of State Police. These funds shall be in
4 addition to any allocations made pursuant to existing
5 laws and shall be designated for the exclusive use of
6 State crime laboratories. These uses may include, but
7 are not limited to, the following:

8 (A) Costs incurred in providing analysis and
9 genetic marker categorization as required by
10 subsection (d).

11 (B) Costs incurred in maintaining genetic
12 marker groupings as required by subsection (e).

13 (C) Costs incurred in the purchase and
14 maintenance of equipment for use in performing
15 analyses.

16 (D) Costs incurred in continuing research and
17 development of new techniques for analysis and
18 genetic marker categorization.

19 (E) Costs incurred in continuing education,
20 training, and professional development of forensic
21 scientists regularly employed by these laboratories.

22 (1) The failure of a person to provide a specimen, or of
23 any person or agency to collect a specimen, within the 45 day
24 period shall in no way alter the obligation of the person to
25 submit such specimen, or the authority of the Illinois
26 Department of State Police or persons designated by the
27 Department to collect the specimen, or the authority of the
28 Illinois Department of State Police to accept, analyze and
29 maintain the specimen or to maintain or upload results of
30 genetic marker grouping analysis information into a State or
31 national database.

32 (Source: P.A. 91-528, eff. 1-1-00; 92-16, eff. 6-28-01;
33 92-40, eff. 6-29-01; 92-571, eff. 6-26-02; 92-600, eff.
34 6-28-02; 92-829, eff. 8-22-02; 92-854, eff. 12-5-02; revised

1 1-20-03.)

2 Section 95. Severability. The provisions of this Act
3 are severable under Section 1.31 of the Statute on Statutes.

4 Section 99. Effective date. This Act takes effect upon
5 becoming law.